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 BOWLES & VERNA LLP  
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5 Attorneys for Third Party Defendant  
 6 Worthington Industries, Inc.

7  
 8  
 9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA

11 ANDREW SHALABY, an individual, and SONIA  
 12 DUNN-RUIZ an individual,

13 Plaintiffs,

14 vs.

15 IRWIN INDUSTRIAL TOOL COMPANY, THE  
 HOME DEPOT, INC., and DOES 2 through 100,  
 16 inclusive,

17 Defendants.

Case No.: C06-07026 MJJ

Judge Martin J. Jenkins

**DECLARATION OF JOSEPH TANCREDY  
 IN SUPPORT OF THIRD PARTY  
 DEFENDANT WORTHINGTON  
 INDUSTRIES, INC.'S REPLY BRIEF IN  
 SUPPORT OF MOTION TO TRANSFER  
 VENUE**

Date: September 25, 2007  
 Time: 9:30 a.m.  
 Ctrm: 11, 19<sup>th</sup> Floor

19 BERNZOMATIC,

20 Third Party Plaintiff,

21 vs.

22 WESTERN INDUSTRIES, INC.,  
 23 WORTHINGTON INDUSTRIES, AND ROES 2  
 through 100, inclusive,

24 Third Party Defendants.

25  
 26 I, Joseph Tancredy, declare as follows:

27 1. I am employed by St. Paul Traveler's Insurance Company, the liability insurance carrier

28 CASE NO.: C06-07026 MJJ

1

DECLARATION OF JOSEPH TANCREDY IN SUPPORT OF WORTHINGTON'S REPLY BRIEF IN  
 SUPPORT OF MOTION TO TRANSFER VENUE

1 for Irwin Industrial Tool Company. Bernzomatic is an unincorporated division of Irwin Tool Company.

2 I am familiar with the above-entitled action and the matters set forth in this Declaration are known to  
3 me personally and, if called and sworn as a witness, I could competently testify thereto.  
4

5 2. I understand that Worthington Industries, Inc. has filed a Motion to Transfer Venue from  
6 the Northern District of California to the Southern District of California in San Diego.

7 3. If called as a witness, I am very willing to travel to the San Diego to testify at trial, if  
8 necessary.  
9

10  
11 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
12 true and correct.  
13

14 Executed this 10th day of ~~August~~, 2007 at Walnut Creek, California.  
15 September

16   
17 JOSEPH TANCREDY  
18  
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25  
26  
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28

Lowell T. Carruth, # 034065  
McCormick, Barstow, Sheppard,  
Wayte & Carruth LLP  
P.O. Box 28912  
5 River Park Place East  
Fresno, CA 93720-1501  
Telephone: (559) 433-1300  
Facsimile: (559) 433-2300

(SPACE BELOW FOR FILING STAMP ONLY)

Attorneys for Third-Party Defendant  
WESTERN INDUSTRIES, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANDREW SHALABY, an individual, and  
SONIA DUNN-RUIZ, an individual,

Plaintiffs,

v.

IRWIN INDUSTRIAL TOOL  
COMPANY, THE HOME DEPOT, INC.,  
and DOES 2 through 100, inclusive,

Defendants.

BERNZOMATIC,

Cross-Complainant,

v.

WESTERN INDUSTRIES, INC.,  
WORTHINGTON INDUSTRIES, AND  
ROES 2 through 100, inclusive,

Cross-Defendants.

Case No. C 06-07026 MJJ

**STIPULATION AND ORDER  
WITHDRAWING MOTION TO STRIKE  
AND EXTENDING DUE DATE FOR  
FILING RESPONSE TO THIRD-PARTY  
COMPLAINT**

Judge: Martin J. Jenkins

IT IS HEREBY STIPULATED by and between Defendant and Third Party Plaintiff  
BERNZOMATIC, an Unincorporated Division of Irwin Industrial Tool Company, and Defendant  
THE HOME DEPOT, INC. (collectively referred as "BERNZOMATIC") and Third Party  
Defendant WESTERN INDUSTRIES, INC., ("WESTERN") and by and through their respective

STIPULATION AND ORDER WITHDRAWING MOTION TO STRIKE AND EXTENDING DUE DATE FOR  
RESPONSE TO COMPLAINT C 06-07026 EDL

attorneys of record that the Motion To Strike Cross-Complainant's Third Party Complaint Against Cross-Defendant, Western Industries, Inc., shall be withdrawn. WESTERN'S response to BERNZOMATIC's Third Party Complaint shall be due twenty (20) days after the Court rules on Defendant WORTHINGTON INDUSTRIES' Motion for Change of Venue.

Dated: September 5, 2007

MCCORMICK, BARSTOW, SHEPPARD,  
WAYTE & CARRUTH LLP

By: /s/ Lowell T. Carruth  
Lowell T. Carruth  
Attorneys for Third-Party Defendant  
WESTERN INDUSTRIES, INC.

Dated: August 27, 2007

KELLER, PRICE & MOORHEAD

By: /s/ J. Phillip Moorhead  
J. Phillip Moorhead  
Attorneys for Defendant and Third Party  
Plaintiff BERNZOMATIC, an  
Unincorporated Division of Irwin  
Industrial Tool Company, and Defendant  
THE HOME DEPOT, INC.

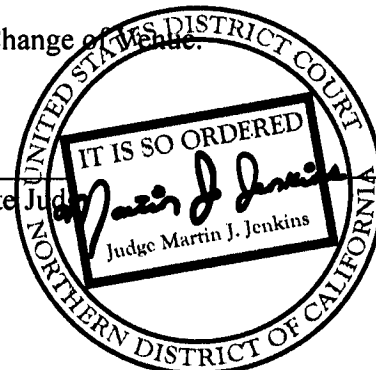
**ORDER**

The Court, having considered the above Stipulation and good cause appearing, hereby orders that the Motion To Strike Cross-Complainant's Third Party Complaint Against Cross-Defendant, Western Industries, Inc., shall be withdrawn. WESTERN'S response to BERNZOMATIC's Third Party Complaint shall be due twenty (20) days after the Court rules on Defendant WORTHINGTON INDUSTRIES' Motion for Change of Venue.

IT IS SO ORDERED.

Dated: 9/6/07

U.S. Magistrate Judge



03664/00161-1127231.v1

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 **ANDREW SHALABY, et al.,**

4  
5 Plaintiff(s),

No. C06-7026 MJJ

Clerk's Notice

6 v.

7 **IRWIN INDUSTRIAL TOOL COMPANY, et al.,**

8 Defendant(s),  
9 \_\_\_\_\_/

10 (Plaintiff is required to serve, and file proof of service with the Court, any party involved not  
11 listed on the attached proof of service.)

12 YOU ARE NOTIFIED THAT the Court has rescheduled the motion(s) currently on calendar for  
13 September 25, 2007 to Tuesday October 16, 2007 at 9:30 a.m. before the Honorable Martin J.  
14 Jenkins.

15 Please report to courtroom 11, on the 19th floor, U.S. Courthouse, 450 Golden Gate Avenue, San  
16 Francisco, CA 94102.

17  
18 Dated: September 14, 2007

FOR THE COURT,

Richard W. Wieking, Clerk

19  
20 By: *Alfred Amistoso*  
21 Alfred Amistoso  
22 Courtroom Deputy

23  
24 Please refer to Judge Jenkins' Standing Order located at [www.cand.uscourts.gov](http://www.cand.uscourts.gov) for additional  
25 information. Pursuant to the Standing Order, the rescheduling of a hearing date for a motion does  
26 not change the date on which an opposition brief or reply brief is due; any opposition brief remains  
due not less than 21 days prior to the date of the *originally noticed* hearing and any reply brief is due  
not less than 14 days prior to the *originally noticed* hearing date.

RICHARD A. ERGO (# 110487)  
CATHLEEN S. HUANG (# 219554)  
BOWLES & Verna LLP  
2121 N. California Boulevard, Suite 875  
Walnut Creek, California 94596  
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[chuang@bowlesverna.com](mailto:chuang@bowlesverna.com)

Attorneys for Third Party Defendant  
Worthington Industries, Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANDREW SHALABY, an individual, and SONIA  
DUNN-RUIZ an individual,

Plaintiffs,

vs.

IRWIN INDUSTRIAL TOOL COMPANY, THE  
HOME DEPOT, INC., and DOES 2 through 100,  
inclusive,

Defendants.

Case No.: C06-07026 MJJ

Judge Martin J. Jenkins

**THIRD PARTY DEFENDANT  
WORTHINGTON INDUSTRIES, INC.'S  
REQUEST TO APPEAR  
TELEPHONICALLY AT CASE  
MANAGEMENT CONFERENCE**

Date: October 2, 2007

Time: 2:00 p.m.

Ctrm: 11, 19<sup>th</sup> Floor

BERNZOMATIC,

Third Party Plaintiff,

vs.

WESTERN INDUSTRIES, INC.,  
WORTHINGTON INDUSTRIES, AND ROES 2  
through 100, inclusive,

Third Party Defendants.

Third party defendant Worthington Industries, Inc. hereby requests that its attorney of record,  
Cathleen S. Huang of Bowles & Verna LLP, be allowed to participate in the Case Management

1 Conference scheduled for Tuesday, October 2, 2007 at 2:00 p.m. before the Honorable Martin J.  
2 Jenkins by telephone.

3 Dated: September 20, 2007

BOWLES & VERNA LLP

By:

  
CATHLEEN S. HUANG  
Attorneys for rThird Party Defendant  
WORTHINGTON INDUSTRIES, INC.

9 IT IS SO ORDERED.

11 Dated: September \_\_\_\_, 2007

HONORABLE MARTIN J. JENKINS

Lowell T. Carruth, # 034065  
McCormick, Barstow, Sheppard,  
Wayte & Carruth LLP  
P.O. Box 28912  
5 River Park Place East  
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(SPACE BELOW FOR FILING STAMP ONLY)

Attorneys for Third-Party Defendant  
WESTERN INDUSTRIES, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANDREW SHALABY, an individual, and  
SONIA DUNN-RUIZ, an individual,

Plaintiffs,

v.

IRWIN INDUSTRIAL TOOL  
COMPANY, THE HOME DEPOT, INC.,  
and DOES 2 through 100, inclusive,

Defendants.

BERNZOMATIC,

Cross-Complainant,

v.

WESTERN INDUSTRIES, INC.,  
WORTHINGTON INDUSTRIES, AND  
ROES 2 through 100, inclusive,

Cross-Defendants.

Case No. CV 06-07026 MJJ

**THIRD-PARTY DEFENDANT WESTERN  
INDUSTRIES, INC.'S REQUEST TO  
APPEAR TELEPHONICALLY AT CASE  
MANAGEMENT CONFERENCE**

Judge: Martin J. Jenkins  
Date: October 2, 2007  
Time: 2:00 p.m.  
Courtroom: 11, 19<sup>th</sup> Floor

Third-Party Defendant WESTERN INDUSTRIES, INC., hereby requests that its attorney  
of record, Lowell T. Carruth of McCormick, Barstow, Sheppard, Wayte & Carruth LLP, be

///

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///



1 allowed to participate in the Case Management Conference presently set for October 2, 2007 at  
2 2:00 p.m. before the Honorable Martin J. Jenkins by telephone.

3  
4 Dated: September 20, 2007

McCORMICK, BARSTOW, SHEPPARD,  
WAYTE & CARRUTH LLP

5  
6 By: /s/ Lowell T. Carruth

7 Lowell T. Carruth  
8 Attorneys for Third-Party Defendant  
9 WESTERN INDUSTRIES, INC.

10 ORDER

11 IT IS SO ORDERED.

12 DATED: September \_\_, 2007

13 The Honorable Martin J. Jenkins  
14 Judge of the U.S. District Court

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16 03664/00161-1141311.v1  
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1 MICHAEL J. VEILUVA (State Bar No. 100419)  
2 MARK D. EPSTEIN (State Bar No. 168221)  
3 ALBORG, VEILUVA & EPSTEIN LLP  
200 Pringle Avenue, Suite 410  
4 Walnut Creek, CA 94596  
Telephone: (925) 939-9880  
Facsimile: (925) 939-9915

5 Attorneys for Plaintiffs  
6 Andrew Shalaby and Sonia Dunn-Ruiz

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 ANDREW SHALABY and SONIA DUNN-  
11 RUIZ,

12 Plaintiffs,

13 vs.

14 IRWIN INDUSTRIAL TOOL COMPANY,  
15 INC., THE HOME DEPOT, INC., and DOES  
2 through 100, inclusive,

16 Defendants.

Case No. C 06-07026 MJJ

**JOINT CASE MANAGEMENT  
STATEMENT AND PROPOSED ORDER**

Date: October 2, 2007

Time: 2:00 p.m.

Dept.: Courtroom 11, 19<sup>th</sup> Floor

Judge: The Hon. Martin J. Jenkins

Complaint filed: October 10, 2006

Case Removed: November 9, 2006

17 AND RELATED THIRD PARTY CLAIMS  
18 /

19 The parties to the above-entitled action jointly submit this Case Management Statement  
20 and Proposed Order, and respectfully request that the Court adopt it as its Case Management  
21 Order in this case.

22 **DESCRIPTION OF THE CASE**

23 This case stems from an incident that occurred on April 21, 2006, in which plaintiff  
24 Andrew Shalaby was injured while using a BernzOmatic brand MAPP Gas cylinder and torch.

25 **1. Brief Description of the Events Underlying the Action**

26 **a. Description of the Product at Issue in the Case**

27 Plaintiff Andrew Shalaby contends that he purchased a BernzOmatic brand MAPP Gas  
28 kit consisting of a MAPP gas cylinder and torch from a local hardware store, near his home in El

1 Cerrito, California in mid-2005. He further contends that sometime after he purchased the  
2 original BernzOmatic kit, Mr. Shalaby purchased two replacement BernzOmatic MAPP Gas  
3 cylinders to use when the original cylinder was depleted of fuel. MAPP gas is a mixture of  
4 liquefied petroleum and methylacetylene-propadiene. MAPP gas is typically used for welding or  
5 soldering applications due to its high combustion temperature of 5301° F (2927° C ).

6 The products involved in this dispute are a yellow colored canister or "cylinder" which  
7 contained the MAPP gas that served as the fuel, and a "torch" that emits a flame from the tip  
8 when it is in use. The torch attached to the cylinder by screwing on to a threaded metal neck at  
9 the top of the cylinder. When the torch is attached to the cylinder, the user ignites the torch by  
10 pulling a trigger switch that is part of the torch assembly.

11 **b. The Parties**

12 The plaintiffs are Andrew Shalaby and his wife, Sonia Dunn-Ruiz. Mr. Shalaby contends  
13 he was injured while using a MAPP gas cylinder and torch to light a campfire on or about April  
14 21, 2006. The accident occurred in the presence of Ms. Dunn-Ruiz.

15 The named defendants in the operative (first amended) complaint are Irwin Industrial  
16 Tool Company, of which BernzOmatic is an unincorporated division (hereinafter "Irwin"), and  
17 the Home Depot, Inc. Upon answering the first amended complaint, Irwin filed a third party  
18 complaint for indemnity against Western Industries, Inc. ("Western") and Worthington  
19 Industries, Inc. ("Worthington"). In its third party complaint, Irwin alleges that during the time  
20 periods relevant to this action, Irwin purchased MAPP gas cylinders exclusively from Western  
21 and Worthington. Irwin alleges further that to the extent a BernzOmatic MAPP gas cylinder was  
22 involved in the accident which forms the basis of plaintiffs' first amended complaint, said MAPP  
23 gas cylinder was manufactured by either Western or Worthington.

24 **c. The Incident Underlying This Case**

25 Mr. Shalaby and his family, his wife Sonia Dunn-Ruiz and their two children, are avid  
26 campers. The family owns a recreational vehicle which they use on a regular basis to tour the  
27 western United States and park for overnight stays at designated campgrounds that accommodate  
28

1 recreational vehicles. Prior to and including the evening of April 21, 2006, Mr. Shalaby  
2 regularly used his BernzOmatic MAPP gas cylinder and torch to ignite wood campfires.

3 During the week of April 17, 2006, plaintiffs were vacationing at the "Campland on the  
4 Bay," a recreational vehicle resort located near the water in San Diego, California. On the  
5 evening of April 21, 2006, Mr. Shalaby contends he was severely injured when he activated the  
6 trigger switch on the torch attached to the MAPP gas cylinder. Upon activating the trigger, Mr.  
7 Shalaby contends he was engulfed by heated MAPP gas and flames that were emitted from the  
8 product, which caused severe burns to his face, limbs, and extremities.

9 Ms. Dunn-Ruiz, was less than ten feet away from Mr. Shalaby during the occurrence of  
10 the incident. She initially had her back turned to her husband, but upon hearing a loud noise, she  
11 turned around to witness her husband on fire.

12 Two Campland employees who were on duty the evening of the incident, Warren Ratliff  
13 and Randy Stephens, testified at their depositions that they viewed the cylinder and torch  
14 following the incident, and that they were discarded a short time later because the captain of the  
15 fire department suppression team who responded to the incident advised that the fire department  
16 had no need for them.

17 **d. Plaintiffs Contend That The Incident Was Caused By a Defect In the MAPP**  
18 **Gas Cylinder – Defendants and Third Party Defendants Deny Any Such**  
19 **Defect**

20 Plaintiffs contend that Mr. Shalaby's injuries were caused by manufacturing and/or  
21 design defects in the MAPP gas cylinder that was connected to the torch he was using to start the  
22 campfire.

23 Plaintiffs are informed and believe that the defects in the cylinder resulted in a  
24 phenomenon known in the scientific community as a "BLEVE," which is an acronym that stands  
25 for "Boiling Liquid Expanding Vapor Explosion." A BLEVE occurs when a tank containing  
26 pressurized liquid fails suddenly and produces an explosive effect. During the occurrence of a  
27 BLEVE, the liquid inside the tank absorbs energy from the surrounding fire and rapidly heats up,  
28 resulting in an increased rate of vaporization that increases pressure. When this pressure exceeds

1 a certain limit (characteristic of the material properties of the tank wall, wall thickness and  
2 temperature), the tank fails and the liquid that is released from the tank boils rapidly and  
3 expands. If the liquid inside the tank is flammable, it ignites and forms a fireball.

4 Defendants and third party defendants currently do not believe that a BLEVE occurred,  
5 and contend that there is a safety relief valve to prevent an explosion if pressure builds inside the  
6 cylinder. Defendants and third party defendants believe that the accident occurred as a result of  
7 Mr. Shalaby's misuse of the cylinder and torch. Defendants and third party defendants deny that  
8 the cylinder had any defects.

9 **2. The Principal Factual Issues Which the Parties Dispute**

10 Discovery is still in its early stages. The parties anticipate further discovery may result in  
11 additional factual disputes prior to trial.

12 As of the filing of this joint statement, the parties have the following factual disputes:

13 a. Whether the cylinder or torch were manufactured by any of the parties in this  
14 action.

15 b. Defendants and third party defendants contend that Mr. Shalaby intentionally or  
16 unintentionally caused the torch and MAPP gas cylinder at issue to come in contact with a  
17 campfire in the moments preceding the incident. Plaintiffs deny this contention, and deny that  
18 either the torch or cylinder ever came into contact with the campfire at any time prior to the  
19 incident.

20 c. Defendants and third party defendants contend that Mr. Shalaby hit or struck the  
21 MAPP gas cylinder or torch at issue against a concrete fire ring or otherwise misused the torch or  
22 cylinder. Plaintiffs deny that Mr. Shalaby ever hit or struck the cylinder or torch against any  
23 surface prior to the incident, or that he misused them in any way.

24 **3. The Principal Legal Issues Which the Parties Dispute**

25 The parties reasonably anticipate that they may have one or more disputes regarding the  
26 following legal issues:

1 a. Whether or not the any of the products at issue in this case contained a  
2 manufacturing defect when it left defendants' possession.

3 b. Whether or not Plaintiffs can make a prima facie showing of defect  
4 without the actual products available for examination and inspection by all parties and experts.

5 c. Whether or not the products at issue in this case, or any of their  
6 components, contained one or more design defects.

7 d. Whether or not any defect in any of the products was present at the time it  
8 left the custody and control of any parties in this action.

9 e. Whether or not Mr. Shalaby's injuries at issue in this case were  
10 proximately caused, in whole or in part, by a defective or unsafe condition in one or more of the  
11 products.

12 f. Whether or not Mr. Shalaby's injuries were proximately caused, in whole  
13 or in part, by a misuse of one or more of the products.

14 g. Whether or not Mr. Shalaby was using the products in a safe and/or  
15 intended and foreseeable manner.

16 h. Whether or not the products at issue in this case had adequate instructions  
17 or warnings that addressed the potential risks and factors in using the product which plaintiffs  
18 contend proximately caused Mr. Shalaby's injuries.

19 i. Whether or not Irwin, or either of the two third party defendants, has any  
20 liability for plaintiffs' injuries and, if so, whether Irwin and one or both of the third party  
21 defendants are jointly and severally liable for plaintiffs' injuries.

22 j. Whether or not Irwin or one of its vendors, suppliers and/or subcontractors  
23 was negligent in manufacturing and/or designing the products or component parts.

24 k. Whether or not the products performed as safely as an ordinary consumer  
25 would have expected it to perform when used in the manner that Mr. Shalaby used it at the time  
26 of the incident.

27 l. Whether or not Mr. Shalaby's claimed injuries and damages in this case,  
28 or some of them, were proximately caused by the incident.

1 m. Whether or not the products were of the quality that a reasonable buyer  
2 would expect, or was fit for the ordinary purposes for which similar or like-kind products are  
3 typically used.

4 n. Whether or not Irwin and/or the third party defendants can make a prima  
5 facie showing that the products conformed with generally accepted design, manufacturing, and  
6 safety standards and regulations in existence at the time of the incident, and if so, what the  
7 relevance and weight of that evidence is as to the issue of whether the products contained a  
8 design and/or manufacturing defect.

9 o. Whether Mr. Shalaby was negligent in his use of the products thereby  
10 barring or reducing his recovery, if any.

11 4. **The Other Factual Issues (e.g. Service of Process, Personal Jurisdiction,**  
12 **Subject Matter Jurisdiction, or Venue) Which Remain Unresolved**

13 None.

14 5. **The Parties Which Have Not Been Served and the Reasons**

15 All named defendants and third party defendants have been served.

16 6. **The Additional Parties To Be Joined**

17 None at this time.

18 **ALTERNATIVE DISPUTE RESOLUTION**

19 7. **The Following Parties Consent to Assignment of this Case to a United States**  
20 **Magistrate Judge**

21 None.

22 8. **ADR**

23 The parties agree to submit the case to mediation before a private mediator who has yet to  
24 be selected.

25 **DISCLOSURES**

26 Plaintiffs and Irwin certify that they have made the disclosures that are required of them  
27 by F.R. Civ. P. 26(a)(1) and Civil L.R. 16-9. The parties have stipulated that Western and  
28 Worthington have until September 28, 2007 to make the disclosures that are required of them by  
F.R. Civ. P. 26(a)(1) and Civil L.R. 16-9, and certify that they will do so by that date.

**DISCOVERY**

The parties agree to the following discovery plan, exclusive of expert discovery:

- a. Interrogatories. Each party may propound up to 35 interrogatories.
- b. Requests for Documents and Things. Each party may propound up to 35 requests for production of documents and things.
- c. Depositions. Each party may take up to 15 depositions of percipient witnesses and non-retained expert witnesses.
- d. Third Party Subpoenas. In addition to any deposition subpoenas, each party may serve up to 15 third party subpoenas for purposes of inspection and producing documents and things including, but not limited to, entry onto land to inspect the accident site.
- e. Defendants request that Plaintiffs be required to disclose and produce for deposition their experts, prior to Defendants having to disclose their experts. This proposal is based on defendants' view that plaintiffs have not put forth a specific theory of what was defective and what caused the accident. Defendants believe it would be unfair and unduly prejudicial to them if they were required to retain an expert without knowing plaintiffs' theory of liability. Plaintiffs believe that it would be unfair and unduly prejudicial to them if they were required to disclose and produce their experts before defendant, and request that expert disclosure be simultaneous.

The parties will need to complete some basic discovery prior to mediation, but do not anticipate that they will be able to complete all necessary discovery before mediation. Plaintiffs believe that the parties will be able to complete non-expert discovery by January 31, 2008, barring unforeseen difficulties. Defendants anticipate that they will be able to complete their non-expert discovery by April 30, 2008, barring unforeseen difficulties.

**TRIAL SCHEDULE**

Plaintiffs request a trial date in April 2008. Defendants request a trial date in September 2008. The parties estimate that the trial will last between five to seven court days.



**SIGNATURE AND CERTIFICATION BY PARTIES AND LEAD TRIAL COUNSEL**

Pursuant to Civil L.R. 16-12, each of the undersigned certifies that he or she has read the brochure entitled "Dispute Resolution Procedures in the Northern District of California," discussed the available dispute resolution options provided by the court and private entities and has considered whether this case might benefit from any of the available dispute resolution options.

Dated: September 21, 2007

KELLER, PRICE &amp; MOORHEAD

/s/

By: \_\_\_\_\_

J. PHILLIP MOORHEAD

Attorneys for Defendants IRWIN INDUSTRIAL  
TOOL COMPANY, INC. and THE HOME DEPOT, INC.

Date: September 21, 2007

ALBORG, VEILUVA &amp; EPSTEIN LLP

/s/

By: \_\_\_\_\_

MARK D. EPSTEIN

Attorneys for Plaintiffs

Dated: September 21, 2007

BOWLES &amp; VERNA LLP

/s/

By: \_\_\_\_\_

RICHARD A. ERGO

Attorneys for Third Party Defendant  
WORTHINGTON INDUSTRIES, INC.

Dated: September 21, 2007

McCORMICK, BARSTOW, SHEPPARD,  
WAYTE & CARRUTH LLP

/s/

By: \_\_\_\_\_

LOWELL T. CARRUTH

Attorneys for Third Party Defendant  
WESTERN INDUSTRIES, INC.

**CASE MANAGEMENT ORDER**

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

In addition, the Court orders:

Dated: \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANDREW SHALABY and SONIA DUNN-RUIZ,

No. C-06-7026 MJJ

Plaintiffs,

Clerk's Notice

v.

IRWIN INDUSTRIAL TOOL COMPANY, INC.,  
et al.,

Defendants,

AND RELATED THIRD PARTY CLAIMS

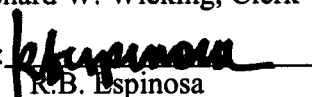
(Plaintiff is required to serve, and file proof of service with the Court, any party involved not listed on the attached proof of service.)

YOU ARE NOTIFIED THAT the Court has rescheduled the **Case Management Conference** on October 2, 2007 at 2:00 p.m. to **Tuesday, November 13, 2007 at 1:45 p.m. to be conducted telephonically** before the Honorable Martin J. Jenkins. Counsel for Third Party Defendant, Worthington Industries, shall initiate a joint teleconference with all counsel and thereafter call (415) 522-4141. A joint statement from the parties is due ten (10) days prior to the conference.

Dated: 09/26/07

FOR THE COURT,

Richard W. Wieking, Clerk

By:   
R.B. Espinosa  
Courtroom Deputy

Please refer to Judge Jenkins' Standing Order located at [www.cand.uscourts.gov](http://www.cand.uscourts.gov) for additional information. Pursuant to the Standing Order, the rescheduling of a hearing date for a motion does not change the date on which an opposition brief or reply brief is due; any opposition brief remains due not less than 21 days prior to the date of the *originally noticed* hearing and any reply brief is due not less than 14 days prior to the *originally noticed* hearing date.

RICHARD A. ERGO (# 110487)  
CATHLEEN S. HUANG (#219554)  
BOWLES & VERNA LLP  
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Attorneys for Third Party Defendant  
Worthington Industries, Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANDREW SHALABY, an individual, and SONIA  
DUNN-RUIZ an individual,

Plaintiffs,

vs.

IRWIN INDUSTRIAL TOOL COMPANY, THE  
HOME DEPOT, INC., and DOES 2 through 100,  
inclusive,

Defendants.

BERNZOMATIC,

Third Party Plaintiff,

vs.

WESTERN INDUSTRIES, INC.,  
WORTHINGTON INDUSTRIES, AND ROES 2  
through 100, inclusive,

Third Party Defendants.

**CASE NO.: C06-07026 MJJ**

Judge Martin J. Jenkins

**ADR CERTIFICATION BY  
WORTHINGTON INDUSTRIES, INC. AND  
ITS COUNSEL**

Pursuant to Civil L.R. 16-8(b) and ADR L.R. 3-5(b), each of the undersigned certifies that he or  
she has:

CASE NO.: C06-07026 MJJ

1

ADR CERTIFICATION BY WORTHINGTON INDUSTRIES, INC. AND ITS COUNSEL

1 1. Read the handbook entitled "*Dispute Resolution Procedures in the Northern District of*  
2 *California*" on the ADR Internet site [www.adr.cand.uscourts.gov](http://www.adr.cand.uscourts.gov); <http://www.adr.cand.uscourts.gov>.

3 2. Discussed the available dispute resolution options provided by the Court and private  
4 entities; and

5 3. Considered whether their case might benefit from any of the available dispute resolution  
6 options.  
7

8  
9 Dated: September 21, 2007

WORTHINGTON INDUSTRIES, INC.

11  
12 By: 

13 Tim Doney  
14 In-House Counsel for Third Party Defendant  
WORTHINGTON INDUSTRIES, INC.

15  
16  
17 Dated: September 27, 2007

BOWLES & VERNA LLP

18  
19  
20  
21 By: 

22 Richard A. Ergo  
23 Cathleen S. Huang  
24 Attorneys for Third Party Defendant  
25 WORTHINGTON INDUSTRIES, INC.  
26  
27  
28

1 MICHAEL J. VEILUVA (State Bar No. 100419,  
 2 MARK D. EPSTEIN (State Bar No. 168221,  
 3 ALBORG, VEILUVA & EPSTEIN LLP  
 200 Pringle Avenue, Suite 410  
 4 Walnut Creek, CA 94596  
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5 Attorneys for Plaintiffs  
 6 Andrew Shalaby and Sonia Dunn-Ruiz

7  
 8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

10 ANDREW SHALABY and SONIA DUNN-  
 11 RUIZ,

12 Plaintiffs,

13 vs.

14 IRWIN INDUSTRIAL TOOL COMPANY,  
 INC., THE HOME DEPOT, INC., and DOES  
 15 2 through 100, inclusive

16 Defendants.

Case No. C 06-07026 MJJ

PLAINTIFFS' ADMINISTRATIVE  
 MOTION PURSUANT TO CIVIL LOCAL  
 RULE 7-11 FOR LEAVE TO FILE  
 OBJECTIONS TO EVIDENCE PROFFERED  
 WITH THE REPLY PAPERS IN SUPPORT  
 OF WORTHINGTON INDUSTRIES, INC.'S  
 MOTION TO TRANSFER VENUE

Judge: The Honorable Martin J. Jenkins

Complaint filed: October 10, 2006  
 Case Removed: November 9, 2006

17 AND RELATED THIRD PARTY CLAIMS

18  
 19 Plaintiffs Andrew Shalaby and Sonia Dunn-Ruiz respectfully submit this administrative  
 20 motion, pursuant to Civil Local Rule 7-11, for leave to file objections to evidence that was  
 21 submitted and proffered by third party defendant Worthington Industries, Inc. ("Worthington",  
 22 for the first time in connection with its reply brief in support of Worthington's motion to transfer  
 23 venue, which is now scheduled for hearing on October 16, 2007. Plaintiffs have attached their  
 24 proposed objections as Exhibit A to the Declaration of Mark D. Epstein in support of this  
 25 administrative motion.

26 There is good cause to grant this administrative motion because Worthington has  
 27 proffered new declarations with its reply brief in support of its motion to transfer venue which  
 28

1 contain numerous statements that are untrustworthy and inadmissible, that would be unduly  
2 prejudicial to plaintiffs if they were to be admitted. Because these declarations were submitted  
3 for the first time with Worthington's reply brief, plaintiffs are unable to submit written  
4 objections to this evidence without first obtaining leave of court, per the Court's local rules and  
5 the Standing Order of the Honorable Martin J. Jenkins. Plaintiffs should be permitted under  
6 fundamental notions of fairness and efficiency to submit written objections to Worthington's  
7 newly submitted evidence in advance of the hearing. In Provenz v. Miller, 102 F.3d 1478, 1483  
8 (9<sup>th</sup> Cir. 1996,, the court held that it would be "unfair" to allow moving parties to submit new  
9 evidence in connection with their reply papers without affording the non-moving parties an  
10 opportunity to respond. See also Pfohl v. Farmers Ins. Group, 2004 U.S. Dist. LEXIS 6447 at \*4  
11 n.1 (C.D. Cal. March 1, 2004, (defendant permitted to file sur-reply where plaintiff submitted  
12 new evidence and raised new argument in reply,; Hammett v. Am. Banker's Ins. Co., 203 F.R.D.  
13 690, 695 n.1 (S.D. Fla. 2001, (same,.  
14

15 Accordingly, plaintiffs respectfully request that they be granted leave to file their  
16 objections to submitted with Worthington's reply papers in support of its motion to transfer  
17 venue.  
18

19 DATED: October 4, 2007

ALBORG, VEILUVA & EPSTEIN, LLP

21 /s/ Mark D. Epstein

22 By: \_\_\_\_\_

23 MARK D. EPSTEIN

24 Attorneys for Plaintiffs ANDREW SHALABY and  
25 SONIA DUNN-RUIZ  
26  
27  
28

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5 Attorneys for Plaintiffs  
 6 Andrew Shalaby and Sonia Dunn-Ruiz

7  
 8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

10 ANDREW SHALABY and SONIA DUNN-  
 11 RUIZ,

12 Plaintiffs,

13 vs.

14 IRWIN INDUSTRIAL TOOL COMPANY,  
 INC., THE HOME DEPOT, INC., and DOES  
 15 2 through 100, inclusive

16 Defendants.

Case No. C 06-07026 MJJ

DECLARATION OF MARK D. EPSTEIN IN  
 SUPPORT OF PLAINTIFFS'  
 ADMINISTRATIVE MOTION PURSUANT  
 TO CIVIL LOCAL RULE 7-11 FOR  
 LEAVE TO FILE OBJECTIONS TO  
 EVIDENCE PROFFERED WITH THE  
 REPLY PAPERS IN SUPPORT OF  
 WORTHINGTON INDUSTRIES, INC.'S  
 MOTION TO TRANSFER VENUE

Judge: The Honorable Martin J. Jenkins

17 AND RELATED THIRD PARTY CLAIMS

Complaint filed: October 10, 2006  
 Case Removed: November 9, 2006

19 I, MARK D. EPSTEIN, declare as follows:

20 1. I am an attorney at law, duly licensed to practice before the courts of the State of  
 21 California, and am admitted to practice before the United States District Court for the Northern  
 22 District of California. I am a partner in the law firm of Alborg, Veiluva & Epstein, LLP, counsel  
 23 of record for plaintiffs in this action. I make the following statements based upon matters that  
 24 are within my personal knowledge, unless otherwise stated on information and belief. If called  
 25 as a witness, I could and would testify competently regarding the matters set forth below.

26 2. I received service of the declarations of Steven T. Gentry and Joseph Tancredy in  
 27 support of third party defendant Worthington Industries, Inc.'s ("Worthington's") motion to  
 28



1 transfer venue (Docket Nos. 64 and 65) for the first time, via the Court's CM-ECF System, on  
2 September 11, 2007, in conjunction with Worthington's reply brief in support of the motion.

3 3. Attached hereto as Exhibit A is a true and correct copy of the set of objections to  
4 the declarations of Steven T. Gentry and Joseph Tancredy that plaintiffs are seeking leave to file.

5 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
6 October 4, 2007 in Walnut Creek, California.

7 /s/ Mark D. Epstein  
8

9 

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MARK D. EPSTEIN  
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1 MICHAEL J. VEILUVA (State Bar No. 100419)  
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8 Attorneys for Plaintiffs  
9 Andrew Shalaby and Sonia Dunn-Ruiz

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 ANDREW SHALABY and SONIA DUNN-  
13 RUIZ,

14 Plaintiffs,

15 vs.

16 IRWIN INDUSTRIAL TOOL COMPANY,  
17 INC., THE HOME DEPOT, INC., and DOES  
18 2 through 100, inclusive

19 Defendants.

20 AND RELATED THIRD PARTY CLAIMS

Case No. C 06-07026 MJJ

PLAINTIFFS' OBJECTIONS TO  
EVIDENCE PROFFERED WITH THE  
REPLY PAPERS IN SUPPORT OF  
WORTHINGTON INDUSTRIES, INC.'S  
MOTION TO TRANSFER VENUE

Date: October 16, 2007

Time: 9:30 a.m.

Ctrm: 11, 19th Floor

Judge: The Honorable Martin J. Jenkins

Complaint filed: October 10, 2006

Case Removed: November 9, 2006

21 Plaintiffs Andrew Shalaby and Sonia Dunn-Ruiz hereby object to the following evidence  
22 submitted and proffered by third party defendant Worthington Industries, Inc. in connection with  
23 its reply brief in support of Worthington's motion to transfer venue, currently set for hearing on  
24 October 16, 2007.

25 1. Objections to the Declaration of Steven T. Gentry

26 Plaintiffs object to the Declaration of Steven T. Gentry in support of Worthington's reply  
27 brief to its motion to transfer venue as follows:

28 a. The declaration as a whole is irrelevant to any issue on this motion.

Evidence which is not relevant is not admissible. Fed. R. Evid. 402. Relevant evidence

1 means evidence having any tendency to make the existence of any fact that is of consequence to  
2 the determination of the action, or in this case the motion, more probable or less probable than it  
3 would be without the evidence. The issues on this motion are (1) whether the witnesses who  
4 reside in San Diego, for whose convenience Worthington purports to make this motion, have  
5 testimony that is of sufficient relative importance vis-à-vis the testimony of the witnesses who  
6 reside in Northern California, and is of sufficient reliability and probative value (and in some  
7 cases whether it is even admissible), to justify overriding plaintiffs' choice of forum and  
8 transferring the case to the Southern District of California, and (2) whether on balance the more  
9 critical witnesses in the case reside in Northern California as opposed to Southern California.

10 None of the statements contained in this declaration, which are all unfounded,  
11 unsubstantiated, and self-serving statements of opinion by Worthington's own Regulatory  
12 Affairs Manager, has any impact on the admissibility, reliability and/or probative value on the  
13 testimony of the third party witnesses that serves as the basis of Worthington's motion to transfer  
14 venue. Nor do any of the statements in this declaration have any impact on the relative  
15 importance of the testimony of the Northern California witnesses vis-à-vis the testimony of the  
16 Southern California witnesses on whose behalf Worthington makes this motion. Moreover,  
17 there are no allegations in the complaint about when or where a hole may have developed in the  
18 MAPP gas cylinder at issue, which is the primary focus of Mr. Gentry's declaration.

19 Accordingly, the declaration of Steven T. Gentry should be disregarded in its entirety on  
20 the grounds that it is irrelevant to any issue in this motion.

21  
22 b. The Statements in Paragraph 3, Lines 11-16 Are Not Based on Matters  
23 That Are Within the Declarant's Personal Knowledge and Contain  
24 Inadmissible Opinions.

25 Statements Objected To:

26 "MAPP gas cylinders contain gas that is under pressure. If there was a hole at the  
27 top of the cylinder, that would have allowed gas to escape from the cylinder. The  
28 sound of the gas escaping would be very audible and very obvious to anyone  
handling the cylinder or in the vicinity of the cylinder. As I am not aware that any  
witness heard the sound of gas escaping before the accident occurred, it seems  
fairly evident that the hole was not created prior to the accident that caused Mr.

Shalaby's injuries."

Objections:

(1) Mr. Gentry's statements and opinions expressed in this paragraph are inadmissible because they are not based upon matters that are within his personal knowledge. A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Fed. R. Evid. 602. Evidence to prove personal knowledge may consist of, among other things, the witness' own testimony. *Ibid.* Mr. Gentry's superficial and conclusory statement in paragraph 1 that, "I have personal knowledge of the following matters," is insufficient to establish that he actually has personal knowledge of facts upon which he bases the statements that follow.

It is not enough for the declarant simply to state that he or she has personal knowledge of the facts stated, as Mr. Gentry has done. Rather, the declaration itself must contain facts showing the declarant's connection with the matters stated therein, establishing the source of his or her information. Fed. R. Evid. 602; see United States v. Shumway, 199 F.3d 1093, 1104 (9<sup>th</sup> Cir. 1999); Bank Melli Iran v. Pahlavi, 58 F.3d 1406, 1412 (9<sup>th</sup> Cir. 1995). Indeed, other statements in Mr. Gentry's declaration contradict his statement in paragraph 1 that he has "personal knowledge" of the matters stated therein, and make clear that he in fact does not have personal knowledge of the facts upon which he bases his statement, opinions and conclusions.

For example, Mr. Gentry begins paragraph 2 by declaring, "It is my understanding that the MAPP gas cylinder involved in this accident..." and, "It is also my understanding that the campground employees observed a hole..." without stating *what* it is upon which he bases his understanding. Moreover, Mr. Gentry's statement in paragraph 3, to which this objection specifically pertains, makes clear that the opinions expressed therein are uncertain, unreliable, and not based upon matters that are within her personal knowledge, i.e., "...it seems fairly evident that the hole was not created prior to the accident (emphasis added)...." Accordingly, the statements in paragraph 3 are inadmissible.

1 (2) The opinions expressed in this paragraph are also inadmissible. Whether  
2 Worthington purports to offer Mr. Gentry's statements as lay or expert opinions, Mr. Gentry has  
3 not stated what the matters are upon which he bases his opinions and, thus, they are inadmissible  
4 opinions under Rule 701 (lay witness opinion), and under Rules 702 and 703 (expert opinions) of  
5 the Federal Rules of Evidence. Among other things, Mr. Gentry's opinions have not been shown  
6 to be rationally based on his perceptions, nor are they helpful to the determination of any fact at  
7 issue in this motion. Moreover, the facts or data upon which Mr. Gentry relies in stating his  
8 opinions have not been identified, nor have they been shown to be of a type reasonably relied  
9 upon by experts in this particular field in forming opinions or inferences upon the subject of his  
10 opinions.

11 c. The Statements in Paragraph 4, Lines 17-19 Are Not Based on Matters  
12 That Are Within the Declarant's Personal Knowledge and Contain  
13 Inadmissible Opinions.

14 Statements Objected To:

15 "The MAPP gas cylinder walls would not breach in the manner described by the  
16 campground employees unless subjected to striking force or localized heat  
17 impingement. A breach would not occur when a person simply attempted to  
ignite a torch that was attached to a MAPP gas cylinder."

18 Objections:

19 (1) Mr. Gentry statements and opinions expressed in this paragraph are inadmissible  
20 because they are not based upon matters that are within his personal knowledge. Mr. Gentry does  
21 not give the names of the campgrounds employees upon whose descriptions of the "MAPP gas  
22 cylinder walls breach" he relies, nor does Mr. Gentry describe the information that he received  
23 from the employees, if any, or whether he personally interviewed the employees, reviewed  
24 transcripts of their deposition testimony, or relied on a hearsay account of their statements as  
25 relayed to him by a third party. As such, there is nothing in the declaration to establish that Mr.  
26 Gentry has personal knowledge of the matter addressed in this paragraph, and his statements in  
27 this paragraph are therefore inadmissible. Fed. R. Evid. 602.  
28

1           (2)     The opinions expressed in this paragraph are also inadmissible. Whether  
2     Worthington purports to offer Mr. Gentry's statements as lay or expert opinions, Mr. Gentry has  
3     not stated what the matters are upon which he bases his opinions and, thus, they are inadmissible  
4     opinions under Rule 701 (lay witness opinion), and under Rules 702 and 703 (expert opinions) of  
5     the Federal Rules of Evidence. Among other things, Mr. Gentry's opinions have not been shown  
6     to be rationally based on his perceptions, nor are they helpful to the determination of any fact at  
7     issue in this motion. Moreover, the facts or data upon which Mr. Gentry relies in stating his  
8     opinions have not been identified, nor have they been shown to be of a type reasonably relied  
9     upon by experts in this particular field in forming opinions or inferences upon the subject of his  
10    opinions.

11                     d.     The Statements in Paragraph 5, Lines 19-26 Are Not Based on Matters  
12                             That Are Within the Declarant's Personal Knowledge and Contain  
                               Inadmissible Opinions.

13                     Statements Objected To:

14                             "It is my understanding that one or more persons at the scene of the accident  
15                             heard Mr. Shalaby say that he kicked the cylinder into the fire. That scenario very  
16                             well could account for the hole in the cylinder observed after the accident. If the  
17                             cylinder was in the fire and a flame or ember impinged on the top of the cylinder,  
18                             the cylinder wall at the point of impingement would weaken. The fire would  
19                             cause the temperature of the MAPP gas to increase; that in turn would cause the  
                               pressure inside the cylinder to increase. It is possible that the cylinder wall at the  
                               point of impingement would weaken to the point where the increased pressure  
                               would cause a breach."

20                     Objections:

21           (1)     Mr. Gentry statements and opinions expressed in this paragraph are inadmissible  
22     because they are not based upon matters that are within his personal knowledge. Mr. Gentry does  
23     not state the facts nor describe the information upon which he bases his *understanding* that "one  
24     or more persons at the incident heard Mr. Shalaby say that he kicked the cylinder into the fire,"  
25     nor does he have personal knowledge that Mr. Shalaby actually kicked the cylinder into the fire.  
26     As such, there is nothing in the declaration to establish that Mr. Gentry has personal knowledge  
27     of the matter addressed in this paragraph, and his statements in this paragraph are inadmissible.  
28     Fed. R. Evid. 602.

1           (2)     The opinions expressed in this paragraph are also inadmissible. Whether  
2     Worthington purports to offer Mr. Gentry's statements as lay or expert opinions, Mr. Gentry has  
3     not stated what the matters are upon which he bases his opinions and, thus, they are inadmissible  
4     opinions under Rule 701 (lay witness opinion), and under Rules 702 and 703 (expert opinions) of  
5     the Federal Rules of Evidence. Among other things, Mr. Gentry's opinions have not been shown  
6     to be rationally based on his perceptions, nor are they helpful to the determination of any fact at  
7     issue in this motion. Moreover, the facts or data upon which Mr. Gentry relies in stating his  
8     opinions have not been identified, nor have they been shown to be of a type reasonably relied  
9     upon by experts in this particular field in forming opinions or inferences upon the subject of his  
10    opinions.

11           2.     Objection to the Declaration of Joseph Tancredy

12           Plaintiffs object to the Declaration of Joseph Tancredy on the grounds that it is irrelevant  
13    to any issue on this motion.

14           Evidence which is not relevant is not admissible. Fed. R. Evid. 402. Relevant evidence  
15    means evidence having any tendency to make the existence of any fact that is of consequence to  
16    the determination of the action, or in this case the motion, more probable or less probable than it  
17    would be without the evidence.

18           Worthington has the burden on this motion of establishing that "the convenience of the  
19    parties and witnesses, and that the interests of justice" require that this case be transferred to the  
20    Southern District of California. Commodity Futures Trading Comm'n v. Savage, 611 F.2d 270,  
21    279 (9th Cir. 1979); Los Angeles Memorial Coliseum Comm'n v. NFL, 89 F.R.D. 497, 499 (CD  
22    Cal. 1981). The pertinent issues on this motion are (1) whether the witnesses who reside in San  
23    Diego, for whose convenience Worthington purports to make this motion, have testimony that is  
24    of sufficient relative importance vis-à-vis the testimony of the witnesses who reside in Northern  
25    California, and is of sufficient reliability and probative value (and in some cases whether it is  
26    even admissible), to justify overriding plaintiffs' choice of forum and transferring the case to the  
27



1 Southern District of California, and (2) whether on balance the more critical witnesses in the case  
2 reside in Northern California as opposed to Southern California.

3 Mr. Tancredy is a resident of Northern California, and thus it certainly would not be in  
4 the interest of his convenience to transfer this case to Southern California. The fact that Mr.  
5 Tancredy may be willing to *inconvenience* himself by traveling to San Diego for trial is entirely  
6 beside the point, and does not provide any grounds on which to grant this motion.

7 Accordingly, the declaration of Joseph Tancredy should be disregarded in its entirety on  
8 the grounds that it is irrelevant to any issue in this motion.

9  
10  
11 DATED: October 4, 2007

ALBORG, VEILUVA & EPSTEIN, LLP

12  
13 /s/ Mark D. Epstein

By: \_\_\_\_\_

14 MARK D. EPSTEIN

15 Attorneys for Plaintiffs ANDREW SHALABY and  
16 SONIA DUNN-RUIZ  
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9 Andrew Shalaby and Sonia Dunn-Ruiz

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 ANDREW SHALABY and SONIA DUNN-  
13 RUIZ,

14 Plaintiffs,

15 vs.

16 IRWIN INDUSTRIAL TOOL COMPANY,  
17 INC., THE HOME DEPOT, INC., and DOES  
18 2 through 100, inclusive

19 Defendants.

Case No. C 06-07026 MJJ

[PROPOSED] ORDER GRANTING  
PLAINTIFFS' ADMINISTRATIVE  
MOTION PURSUANT TO CIVIL LOCAL  
RULE 7-11 FOR LEAVE TO FILE  
OBJECTIONS TO EVIDENCE PROFFERED  
WITH THE REPLY PAPERS IN SUPPORT  
OF WORTHINGTON INDUSTRIES, INC.'S  
MOTION TO TRANSFER VENUE

Judge: The Honorable Martin J. Jenkins

Complaint filed: October 10, 2006  
Case Removed: November 9, 2006

20 Having duly considered plaintiffs Administrative Motion Pursuant to Civil Local Rule 7-  
21 11 for Leave to File Objections to Evidence Proffered With the Reply Papers In Support of  
22 Worthington Industries, Inc.'s Motion to Transfer Venue, the supporting papers, declarations,  
23 and the arguments in support of and in opposition thereto, IT IS HEREBY ORDERED that the  
24 Motion is GRANTED. Plaintiffs shall electronically file the objections that are attached as  
25 Exhibit A to the Declaration of Mark D. Epstein in support of plaintiffs' Administrative Motion.

26 IT IS SO ORDERED.

27 Dated: \_\_\_\_\_

28 The Honorable Martin J. Jenkins  
United States District Court Judge

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(SPACE BELOW FOR FILING STAMP ONLY)

Attorneys for Third-Party Defendant  
 WESTERN INDUSTRIES, INC.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

ANDREW SHALABY, an individual, and  
 SONIA DUNN-RUIZ, an individual,

Plaintiffs,

v.

IRWIN INDUSTRIAL TOOL  
 COMPANY, THE HOME DEPOT, INC.,  
 and DOES 2 through 100, inclusive,

Defendants.

Case No. CV 06-07026 MJJ

**NOTICE IN SUPPORT OF THIRD PARTY  
 DEFENDANT WORTHINGTON  
 INDUSTRIES, INC.'S MOTION TO  
 TRANSFER VENUE**

Judge: Martin J. Jenkins  
 Date: October 16, 2007  
 Time: 9:30 a.m.  
 Courtroom: 11, 19<sup>th</sup> Floor

AND RELATED ACTIONS.

PLEASE TAKE NOTICE that Third Party Defendant WESTERN INDUSTRIES, INC.,  
 supports Third Party Defendant WORTHINGTON INDUSTRIES, INC.'S Motion to Transfer  
 Venue.

Dated: October 5, 2007

MCCORMICK, BARSTOW, SHEPPARD,  
 WAYTE & CARRUTH LLP

By: /s/ Lowell T. Carruth

Lowell T. Carruth  
 Attorneys for Third-Party Defendant  
 WESTERN INDUSTRIES, INC.

03664/00161-1146992.v1

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT of CALIFORNIA

**CIVIL MINUTES**

**Judge:** MARTIN J. JENKINS

**Date:** October 16, 2007

**Case No:** C 06-07026 MJJ

**Case Title:** ANDREW SHALABY, et al. v. NEWELL RUBBERMAID, INC., et al.

**Appearances:**

For Plaintiff(s): Mark Epstein

For Defendant(s): Phillip Moorehead, Richard Ergo, Lowell Carruth

**Deputy Clerk:** Rowena B. Espinosa

**Court Reporter:** Lydia Zinn

**PROCEEDINGS**

1. Hearing on the Motion to Transfer Venue - held

MOTION/MATTER: ☒ Granted  
☐ Denied  
☐ Granted in part/Denied in part  
☐ Taken under submission  
☐ Withdrawn/Off Calendar  
☐ Continued to:

Order to be prepared by: ☐ Plaintiff ☐ Defendant ☒ Court

UNITED STATES DISTRICT COURT  
Northern District of California  
450 Golden Gate Avenue  
San Francisco, California 94102

[www.cand.uscourts.gov](http://www.cand.uscourts.gov)

Richard W. Wieking  
Clerk

General Court Number  
415.522.2000

October 25, 2007

Southern District of California  
940 Front Street  
San Diego, CA 92101

RE: CV 06-07026 MJJ SHALABY ET AL-v-NEWELL RUBBERMAID, INC. ET AL

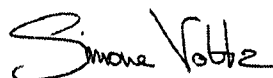
Dear Clerk,

Pursuant to an order transferring the above captioned case to your court, transmitted herewith are:

- ☒ Certified copy of docket entries.
- ☒ Certified copy of Transferral Order.
- ☒ Original case file documents.
- ☒ Please access the electronic case file for additional pleadings you may need. See the attached instructions for details.

Please acknowledge receipt of the above documents on the attached copy of this letter.

Sincerely,  
RICHARD W. WIEKING, Clerk



by: Simone Voltz  
Case Systems Administrator

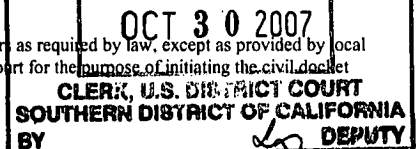
Enclosures  
Copies to counsel of record

JS44

(Rev. 07/89)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)



## I (a) PLAINTIFFS

Andrew Shalaby, Sonia Dunn-Ruiz

## DEFENDANTS

Newell Rubbermaid, Inc, The Home Depot, Inc  
Rubbermaid, Inc. Irwin Industrial Tool Company(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Alameda  
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

## (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Mark Douglas Epstein  
200 Pringle Avenue, Suite 410  
Walnut Creek, CA 94596  
925-939-9880

## ATTORNEYS (IF KNOWN)

'07 CV 2107 W

POR

## II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   |                                       |                            |   |  |
|---|---------------------------------------|----------------------------|---|--|
|   | PT                                    | DEF                        |   | DEF  |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 <input type="checkbox"/> 6            |

## IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 1441

## V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(a)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	

## VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☒ 5 Transferred from another district (specify) Northern district of CA ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

## VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE October 30, 2007

SIGNATURE OF ATTORNEY OF RECORD